

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS HAUSCHILD,

No. C 15-01556 WHA

Plaintiff,

v.

CITY OF RICHMOND AND
CHRISTOPHER MAGNUS,

**ORDER DENYING MOTION
FOR PARTIAL SUMMARY
JUDGMENT**

Defendants.

INTRODUCTION

In this wrongful termination action, defendants move for partial summary judgment on one of plaintiff's claims. For the reasons stated herein, defendants' motion is **DENIED**. Plaintiff's evidentiary objections are **OVERRULED**.

STATEMENT

Plaintiff Thomas Hauschild began working as a police officer for defendant City of Richmond in 2005. He served as a detective, a member of the SWAT team, and as a firearms instructor. Between 2006 and 2012, plaintiff's wife, who also worked for the City of Richmond, made several domestic abuse complaints against plaintiff. In response, plaintiff notified the City of these complaints and the City took no action (Hauschild Decl. at ¶¶ 3–4).

On September 23, 2012 a physical altercation between plaintiff and his wife occurred. Both plaintiff and his wife suffered injuries to their faces and bodies. The Alameda County

Sheriff's Department responded to the scene and opened an investigation, but eventually declined to press charges (*id.* at ¶5).

As a result of this altercation, the City initiated an internal affairs investigation of plaintiff. The investigation delved into many past incidents occurring between 2006 and 2012 and investigators questioned plaintiff about these incidents in the investigatory interview. The investigation concluded on September 18, 2013 (less than one year after the incident) and plaintiff received a *Skelly* hearing notice regarding the termination of his employment on September 24.* Defendant Police Chief Christopher Magnus was appointed as the hearing officer (*id.* at ¶6; Dickerson Decl. at Exh. E).

After the hearing, Magnus recommended plaintiff's employment be terminated based on the following four conclusions: (1) plaintiff had been the "primary aggressor" in the September 2012 domestic violence incident; (2) plaintiff placed a condom on his wife's door the day after the incident, in order to humiliate and intimidate her; (3) plaintiff had possession of eight unregistered firearms at the time of the incident; and (4) plaintiff lied to investigators when he insisted his wife had been the primary aggressor during the incident. Magnus' recommendation stated that each of these incidents, standing alone, warranted plaintiff's dismissal. Moreover, his conclusion stated (Dickerson Decl., Exh. E at 3):

the evidence collected regarding the September 23, 2012 incident, six years of domestic abuse of [plaintiff's wife] leading up to this incident, and Officer Hauschild's defacement of [plaintiff's wife's] property after the incident, conclusively proved that Officer Hauschild was the primary aggressor on September 23, 2012, and battered [plaintiff's wife] in a jealous rage after finding text messages from another officer on her mobile phone.

The recommendation also stated that the evidence showed plaintiff to be the primary aggressor during the September 2012 incident, "even without any consideration of the prior allegations of domestic abuse" (*id.* at 7). The City terminated plaintiff's employment two days after Magnus issued his report.

* A *Skelly* hearing allows an employee to respond to allegations prior to the imposition of any actual disciplinary action. See *Skelly v. State Personnel Board*, 15 Cal. 3d 194 (1975).

1 Plaintiff filed his first amended complaint in May of this year, alleging six separate
2 claims related to the termination of his employment. Shortly thereafter, and before any
3 discovery had taken place, defendant moved for partial summary judgment on three of
4 plaintiff's claims. In response, the parties agreed that plaintiff would drop two of his claims
5 (related to FEHA and California Constitution violations) and would be allowed ninety days to
6 take discovery regarding his Public Safety Officers Procedural Bill of Rights claim (the only
7 claim at issue in this motion). This order follows full briefing and oral argument.

8 ANALYSIS

9 1. MOTION FOR PARTIAL SUMMARY JUDGMENT.

10 Summary judgment is proper where the pleadings, discovery, and affidavits show that
11 there is "no genuine issue as to any material fact and that the moving party is entitled to
12 judgment as a matter of law." Rule 56(c). Material facts are those which may affect the
13 outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

14 Plaintiff asserts four claims in this action, including a federal claim under Section 1983.
15 The instant motion for partial summary judgment only implicates one of plaintiff's state law
16 claims. The Public Safety Officers Procedural Bill of Rights provides that "no punitive action .
17 . . shall be undertaken for any act, omission, or other allegation of misconduct if the
18 investigation of the allegation is not completed within one year of the public agency's
19 discovery." Cal. Govt. Code Section 3304(d)(1). Section 3304(d)(2)(A) tolls the one-year
20 statute of limitations during the pendency of a criminal investigation. The California Supreme
21 Court has held that the purpose of this statute is "to ensure that an officer will not be faced with
22 the uncertainty of a lingering investigation, but will know within one year of the agency's
23 discovery of the officer's act or omission that it may be necessary for the officer to respond in
24 the event he or she wishes to defend against possible discipline." *Mays v. City of Los Angeles*,
25 43 Cal. 4th 313, 322 (2008).

26 Here, both sides agree that the central issue in this motion is whether defendants took
27 punitive action against plaintiff for alleged misconduct that took place beyond POBR's one-
28 year statute of limitations. This order holds that an issue of material exists as to this question.

1 During the investigative interview of plaintiff, internal affairs investigator Walle asked
2 numerous questions about incidents that occurred well beyond the one-year statute of
3 limitations. These included inquiries into domestic incidents which occurred in 2007, 2009,
4 2010, and 2011 (Wilkinson Decl, Exh. A at 29–48). Moreover, defendant Magnus’
5 recommendation following the *Skelly* hearing made several references to these previous
6 incidents. Specifically, Magnus’ memorandum stated that, among other things, plaintiff’s “six
7 years of domestic abuse of [plaintiff’s wife] . . . conclusively proved that Officer Hauschild was
8 the primary aggressor on September 23, 2012” (Dickerson Decl., Exh. E at 3). Magnus also
9 considered that plaintiff “was able to provide detailed accounts of the September 23, 2012
10 domestic violence incident and other domestic violence incidents dating back several years”
11 (*ibid*). From the way in which defendants conducted the investigation, and from the sections of
12 the Magnus memorandum discussing past allegations against plaintiff, a reasonable jury could
13 find that defendants took punitive action against plaintiff for events occurring beyond the
14 POBR’s one-year statute of limitations.

15 Defendants argue that all evidence points to the conclusion that the punitive action
16 against plaintiff arose solely from the September 23, 2012 incident. Defendants contend that
17 the above quoted passages from the Magnus memorandum were contained in the “Summary of
18 Charges” section and were not mentioned in the “Discussion” section, which supposedly
19 contained the analysis and recommendation. Specifically, defendants point out that in the
20 “Discussion” section, Magnus stated (*id.* at 7):

21 The evidence collected during the investigation supports the
22 investigator’s finding that Officer Hauschild was the primary
23 aggressor during the incident on September 23, 2012, even without
any consideration of the prior allegations of domestic abuse by
[plaintiff’s wife] against Officer Hauschild.

24 Moreover, in discussing the four separate charges — the domestic violence incident, the
25 placement of the condom on the door handle, the unregistered firearms, and lying to
26 investigators — Magnus determined that each of these charges, standing alone, warranted
27 termination of employment.
28

1 Thus, defendants argue, because the discussion of the “six years of domestic abuse” only
2 appeared in the “Summary of Charges” section and because Magnus explicitly stated that the
3 incident on September 23, 2012, had been sufficient (in and of itself) without consideration of
4 prior incidents, no issue of material fact exists as to whether defendants took punitive action
5 based on old misconduct. Not so. Defendants’ assertion, that the old conduct played no role in
6 the termination decision, may very well be true. That, however, must be determined by the
7 jury. A reasonable jury could find that based on the several references to past events in the
8 Magnus memorandum, and based on the questions regarding old incidents raised in the
9 investigatory interview, that the City actually gave weight to these old events in making its
10 termination decision. While Magnus explicitly stated that events prior to 2012 did *not* factor
11 into his recommendation, the recurring reference to those events throughout the process raises
12 an inference that plaintiff’s past came back to haunt him. From the facts that a substantial
13 portion of the investigation focused on plaintiff’s conduct from 2006–2011, along with the fact
14 that Magnus’ memorandum discussed the prior instances multiple times, a reasonable jury could
15 find that defendants’ punitive actions were based on conduct that occurred beyond POBR’s one-
16 year statute of limitations.

17 **2. PLAINTIFF’S EVIDENTIARY OBJECTIONS.**

18 In his opposition, plaintiff made two objections to the declarations defendants appended
19 to their motion for partial summary judgment. *First*, plaintiff objects to the inclusion
20 Lieutenant Brian Dickerson’s declaration because defendants failed to list him as a witness in
21 their initial Rule 26 disclosures. Under Rule 37, however, exclusion is not warranted when the
22 failure to disclose a witness is harmless. Here, defendants filed their summary judgment
23 motion, with the Dickerson declaration included, eleven days before the Rule 26 disclosures
24 were even due. In addition, plaintiff included Dickerson as a potential witness in his own Rule
25 26 disclosures. Thus, any assertion that plaintiff has been harmed by defendants’ failure to
26 include Dickerson in their own Rule 26 disclosures is baseless.

27 *Second*, in the alternative, plaintiff objects to paragraph 12 of Dickerson’s declaration,
28 which states that the Alameda County Sheriff’s Department’s investigation of the September

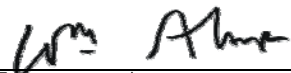
1 23, 2012, incident “concluded sometime in October 2012.” Plaintiff argues this is hearsay and
2 not based on Dickerson’s personal knowledge. Dickerson, however, stated in his declaration
3 that this conclusion had been “[b]ased upon [his] personal participation of the investigation of
4 the four Personnel Complaint charges brought against Detective Hauschild.” Plaintiff could
5 have deposed Dickerson and delved into his personal knowledge of this subject. He chose not
6 to. There is nothing in the record to indicate that Dickerson did not have personal knowledge of
7 the end date of the Sheriff’s investigation, as he swore to in his declaration, other than
8 plaintiff’s bare assertion in his brief.

9 CONCLUSION

10 For the reasons stated herein, defendants’ motion for partial summary judgment
11 regarding the POBR claim against the City of Richmond is **DENIED**. Plaintiff’s evidentiary
12 objections are **OVERRULED**. As the parties stipulated to at the hearing, plaintiff’s POBR claim
13 against defendant Magnus is **DISMISSED**.

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15 **IT IS SO ORDERED.**

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17 Dated: November 20, 2015.

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20 WILLIAM ALSUP
21 UNITED STATES DISTRICT JUDGE
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